

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHIRLEY V. REMMERT,

No. C 08-01645 CRB

Petitioner,

**ORDER GRANTING IFP AND TO
SHOW CAUSE**

v.

JAMES P. FOX, District Attorney of San
Mateo County, et al.,
Respondent.

Now pending before the Court is petitioner's application to proceed *in forma pauperis* ("IFP"). A court may authorize a litigant to prosecute an action in federal court without prepayment of fees or security if the litigant submits an affidavit showing that he or she is unable to pay such fees or give security therefor. See 28 U.S.C. § 1915(a). Petitioner has submitted the required documentation, and it is evident from her application that her assets and income are insufficient to enable plaintiff to prosecute the action.

Viewing petitioner's application in isolation, it appears that she should be allowed to proceed IFP. A court is under a continuing duty, however, to dismiss a case whenever it determines that the action "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(I)-- (iii).


Remmert's petition appears to arise out of a January 17, 2007 conviction. While she alleges that during and after those proceedings she filed several habeas corpus petitions, she

1 specifically represents that she did not appeal her conviction. Petition at p. 3. On the other
2 hand, in a motion to consolidate she alleges that this action is related to her petition in 08-
3 1644 CRB. The Court has determined that the petition in 08-144 CRB is premature because
4 the Appellate Division of the Superior Court of San Mateo County has not yet ruled on her
5 appeal.

6 Accordingly, petitioner is ordered to show cause why this action should not also be
7 dismissed for failure to exhaust state remedies. In particular, on or before **May 30, 2008**,
8 petitioner shall advise the Court in writing of whether her appeal in People v. Remmert, AD
9 4986, 4987 (Superior Court Nos. SM351187, SM340531) is based on the same grounds as
10 the currently pending habeas corpus petition, 08-1645 CRB. If not, petitioner shall
11 specifically identify the conviction she is challenging and the basis for her constitutional
12 claims.

13 **IT IS SO ORDERED.**

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15 Dated: May 12, 2008


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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SHIRLEY,

Plaintiff,

v.

REMMERT-V-C.P. FOX et al,

Defendant.

Case Number: CV08-01645 CRB

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 12, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Shirley V. Remmert
990 Berkeley Avenue
Menlo Park, CA 94025

Dated: May 12, 2008

Richard W. Wieking, Clerk
By: Barbara Espinoza, Deputy Clerk